IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION 3:08cv536

HUBERT C. HELMS,)	
)	
Plaintiff,)	
)	MEMORANDUM OF
VS.)	DECISION AND ORDER
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	
)	
Defendant.)	
)	

THIS MATTER is before the Court on the Defendant's Motion to Dismiss Plaintiff's Complaint For a Lack of Subject Matter Jurisdiction. [Doc. 8].

The Defendant Michael J. Astrue, Commissioner of Social Security, moves the Court for a dismissal of the Plaintiff's Complaint for a lack of subject matter jurisdiction. [Doc. 8]. For grounds, the Defendant contends that the Plaintiff has failed to exhaust his administrative remedies and therefore has not received a final decision of the Commissioner. [Doc. 9]. The Plaintiff does not contest the Defendant's Motion to Dismiss. [Doc. 12].

Upon careful review of the Defendant's Motion, the Court concludes that

the Plaintiff has not exhausted his administrative remedies with respect to his

claim to a period of disability, Disability Insurance Benefits, and Supplemental

Security Income benefits, and thus, there is no "final decision" of the

Commissioner that is subject to judicial review pursuant to 42 U.S.C. § 405(g).

Furthermore, the Plaintiff has not alleged any reason for this Court to excuse

his failure to exhaust his administrative remedies. See Heckler v. Ringer, 466

U.S. 602, 618, 104 S.Ct. 2013, 80 L.Ed.2d 622 (1984).

Accordingly, IT IS, THEREFORE, ORDERED that the Defendant's

Motion to Dismiss Plaintiff's Complaint For a Lack of Subject Matter

Jurisdiction [Doc. 8] is **GRANTED**, and this case is hereby **DISMISSED**. A

Judgment shall be entered simultaneously herewith.

IT IS SO ORDERED.

Signed: April 3, 2009

Martin Reidinger

United States District Judge

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